SIA KWEE HIN

v.

JABATAN AGAMA ISLAM WILAYAH PERSEKUTUAN

FEDERAL COURT, KUALA LUMPUR
EUSOFF CHIN CJ
LAMIN MOHD YUNUS PCA
MOHAMED DZAIDDIN FCJ
[CIVIL APPEAL NO: 01-62-1993]
5 MARCH 1999

ISLAMIC LAW: *Syariah Court - Jurisdiction - Jurisdiction to determine issue of apostacy - Whether lies exclusively with the Syariah Court - Jabatan Agama Islam Wilayah Persekutuan - Whether a proper party to appeal - Federal Constitution arts. 11, 121(1A) - Administration of Islamic Law (Federal Territories) Act 1993 - Islamic Family Law (Federal Territory) Act 1984*

The appellant had converted out of Islam and had thereafter applied to the High Court for a declaration that he was no longer a Muslim. The application was dismissed by the learned judge, upon the authority of *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah & Anor*. Following the appellant's appeal herein, questions arose as to whether the learned judge was right in dismissing the application for want of jurisdiction, and secondly, whether the respondent, the Jabatan Agama Islam Wilayah Persekutuan, was properly cited in the appeal bearing in mind the provisions of the Islamic Family Law (Federal Territory) Act 1984 ('Act 303').

Held:
Per Mohamed Dzaiddin FCJ

[1] Under Act 303, "Majlis" refers to **Majlis Agama Islam Wilayah Persekutuan** under s. 5 of the Administration of Muslim Law Enactment 1952 of Selangor, as modified by the Federal Territory (Modification of Administration of Muslim Law Enactment) Order 1974.

[1a] Part 11 of the Enactment 1952 of Selangor deals with the constitution, powers and obligations of the Majlis, whilst ss. 6 and 7 therein state that the Majlis shall be a body corporate and may sue and be sued in its corporate name. In the circumstances, under Act 303, the proper party to the appeal herein should be Majlis Agama Islam Wilayah Persekutuan and not the respondent.

[2] On the issue of jurisdiction, the appellant's counsel adopted his earlier argument in *Soon Singh's* appeal. That being so, except for the fact that the jurisdiction of the Syariah Court Wilayah Persekutuan is conferred by the Administration of Islamic Law (Federal Territories) Act 1993 following item 6(e) of the Federal List to the Ninth Schedule to the Constitution, the appeal is dismissed for reasons stated in *Soon Singh's* appeal.

[Appeal dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu telah murtad dari Agama Islam dan berikutnya telah memohon kepada Mahkamah Tinggi untuk perisytiharan bahawa beliau bukan lagi seorang Muslim. Permohonan tersebut ditolak oleh yang arif hakim, dengan bergantung kepada autoriti *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah & Satu Lagi*. Ekoran dari rayuan perayu, persoalan telah berbangkit samada hakim yang bijaksana betul bilamana menolak permohonan perayu atas alasan tiada bidangkuasa, dan kedua, samada responden di sini, iaitu Jabatan Agama Islam Wilayah Persekutuan, telah didakwa dengan teraturnya mengambilkira peruntukan-peruntukan Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 ('Akta 303').

Diputuskan:
Oleh Mohamed Dzaiddin HMP

[1] Di bawah Akta 303, "Majlis" merujuk kepada **Majlis Agama Islam Wilayah Persekutuan** di bawah s. 5 Enakmen Pentadbiran Undang-Undang Islam Selangor, 1952, sepertimana yang diubahsuai oleh Perintah Wilayah Persekutuan (Pengubahsuaian Enakmen Pentadbiran Undang-Undang Islam) 1974.

[1a] Bahagian 11 Enakmen Selangor 1952 menyentuh tentang konstitusi, kuasa dan tanggungjawab Majlis, sementara ss. 6 dan 7 di dalamnya menyatakan bahawa Majlis akan menjadi satu pertubuhan perbadanan (body corporate) yang boleh mendakwa atau didakwa atas nama perbadanannya. Dengan hal yang demikian, pihak yang wajar dalam rayuan semasa di bawah Akta 303 ialah Majlis Agama Islam Wilayah Persekutuan dan bukannya responden.

[2] Berhubung isu bidangkuasa, peguam perayu telah menggunapakai hujah-hujah beliau yang terdahulu dalam rayuan *Soon Singh*. Oleh kerana itu, terkecuali fakta bahawa bidangkuasa Mahkamah Syariah Wilayah Persekutuan adalah bersumber dari Akta Pentadbiran Undang-Undang Islam (Wilayah Persekutuan) 1993, rayuan di sini ditolak berdasarkan alasan-alasan yang dinyatakan dalam rayuan *Soon Singh.*

[Rayuan ditolak.]

Cases referred to:

Md Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan Kuala Lumpur [1997] 4 CLJ Supp 419 ***(cit)***

Mohamed Habibullah Mahmood v. Faridah Dato' Talib [1993] 1 CLJ 264 ***(refd)***

Soon Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 2 CLJ 5 ***(refd)***

Legislation referred to:

Administration of Muslim Law Enactment 1952 of Selangor, ss. 5, 6, 7

Constitution (Amendment) (No 2) Act 1973, s. 6(1), (4)

For the appellant - Balwant Singh Sidhu; M/s Balwant Singh Sidhu & Co

For the respondent - Dato' Zaitun Zawiyah Puteh (Raja Ahmad Farid Raja Mazlan with her)

[Appeal from High Court, Kuala Lumpur; Originating Summons No R2-24-86 of 1992]

Reported by WA Sharif

JUDGMENT

Mohamed Dzaiddin FCJ:

By consent of the parties, this appeal was heard together with the earlier appeal in *Soon Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5 as it involved similar point of law on whether the High Court has jurisdiction to hear the plaintiff's application for a declaration that he was no longer a Muslim. The learned judge dismissed the application and adopted the grounds of judgment in *Soon Singh*. Hence, this appeal.

At the outset, Dato' Zaitun Zawiyah raised a preliminary objection that the respondent was not a proper party to the appeal. She submitted that under the Islamic Family Law (Federal Territory) Act 1984 (Act 303) the proper party should be Majlis Agama Islam Wilayah Persekutuan. We agree with her submission. Under Act 303, "Majlis" refers to **Majlis Agama Islam Wilayah Persekutuan** under s. 5 of the Administration of Muslim Law Enactment 1952 of Selangor, as modified by the Federal Territory (Modification of Administration of Muslim Law Enactment) (Order) 1974 made pursuant to s. 6(4) of the Constitution (Amendment) (No. 2) Act 1973 and in force in the Federal Territory by virtue of s. 6(1) of that Act. Part 11 of the Enactment 1952 of Selangor deals with the constitution, powers and obligations of the Majlis. Section 6 states that the Majlis shall be a body corporate having a perpetual succession and a corporate seal and s. 7 says the Majlis may sue and be sued in its corporate name.

In the above circumstances, we uphold the preliminary objection.

On the issue of jurisdiction, Encik Balwant, for the appellant, adopted his earlier arguments in *Soon Singh's* appeal. Dato' Zaitun Zawiyah, in reply relied on *Md. Hakim Lee* [1997] 4 CLJ Supp 419; [1998] 1 MLJ 681. She also referred us to *Mohamed Habibullah bin Mahmood v. Faridah bte Dato' Talib* [1993] 1 CLJ 264; [1992] 2 MLJ 793, which considered s. 5 of Act 303. The section states:

> If for the purposes of this Act any question arises as to whether a person is a Muslim, that question shall be decided according to the criterion of general reputation, without making any attempt to question the faith, beliefs, conduct, behaviour, character, acts, or omissions of that person.

We note that in *Mohamed Habibullah* (p. 815) Mohamed Azmi SCJ applied the above s. 5 (on the test of general reputation) in determining whether Faridah had ceased to be a Muslim. His Lordship found no evidence except the statutory declaration sworn before a Commissioner for Oath to suggest that Faridah had effectively renounced her Islamic faith and thereby committed apostasy. The Supreme Court was therefore not satisfied that Faridah was not a Muslim or apostate at any material time. In the instant appeal, we do not think it necessary to consider or invoke s. 5 of Act 303.

Therefore, except for the fact that the jurisdiction of the Syariah Court Wilayah Persekutuan is conferred by the Administration of Islamic Law (Federal Territories) Act 1993 following item 6(e) of the Federal List to the Ninth Schedule to the Constitution, in our judgment, for reasons stated in *Soon Singh's* appeal, this appeal is dismissed with costs. Deposit to the respondent to account of taxed costs.